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DEPARTMENT OF PLANNING

COUNTY OF MAUI

ADOPTION OF CHAPTER 3
RULES RELATING TO SPECIAL USES
IN STATE AGRICULTURAL AND RURAL DISTRICTS
SEPTEMBER 25, 1989

SUMMARY

Chapter 3, entitled "Rules Relating to Special Uses in State Agricultural and Rural Districts", is hereby adopted.

"TITLE MC-12
DEPARTMENT OF PLANNING

SUBTITLE 03
MOLOKAI PLANNING COMMISSION

CHAPTER 3

RULES RELATING TO SPECIAL USES
IN STATE AGRICULTURAL AND RURAL DISTRICTS

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- §12-3-2 Applicability
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- §12-3-4 Application; contents
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SUBCHAPTER 1

GENERAL PROVISIONS

§12-3-1 Jurisdiction. These rules govern special use permit procedures for agricultural and rural districts before the authority as authorized by chapter 205, Hawaii Revised Statutes as amended.

The authority shall have jurisdiction over special use permits for parcels of land not more than 15 acres in area, in accordance with chapter 205, Hawaii Revised Statutes, and Section 8-8.4(2) of the Revised Charter, County of Maui. Special permits for parcels of land greater than fifteen acres in area shall be subject to approval by the Land Use Commission. [Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: §HRS §91-2)

§12-3-2 Applicability. (a) Any person desiring to conduct certain unusual and reasonable uses within state agricultural and rural districts in areas within the jurisdiction of the authority other than those permitted by law shall apply to the authority for a special use permit.

(b) Unless otherwise expressly permitted in HRS Chapter 205, any commercial use, public use or facility, public utility facilities, or quasi-public use and facility on lands in the state agricultural or rural districts shall be subject to the requirements, procedures and guidelines herein. [Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: §HRS §91-2)

§12-3-3 Definitions.

(a) Unless it is plainly evident from the context that a different meaning is intended, words and phrases used herein are defined as follows:

"Accessory use" means a use which is conducted on the same lot as the principal use to which it is related whether located in the same building or in an accessory building or structure, or as an accessory use of land, or which is conducted on a contiguous lot whether the same is owned in fee simple or leased by the person(s) engaging in the principal use and is clearly incidental to and/or customarily found in connection with the principal use.

"Agricultural use" means any use which is permitted by the provisions of sections 205-2, 205-4.5, and 205-5, Hawaii Revised Statutes, as amended.

"Authority" means the Molokai Planning Commission.

"Central coordinating committee" means land use and code administration, the department of public works, county of Maui.

"Commercial use" means any activity or business for profit and available to the general public including, but not limited to, the growing, processing, manufacturing, or distribution of products; the rendering of professional, technical or other services; the retail sale or wholesaling of any goods or products; the mining and processing of natural resource materials; commercial riding stables; and commercial open area recreational uses.

"Department" means the Department of Planning, County of Maui.

"Director" means the Director of the Department of Planning, County of Maui.

"H.R.S." means Hawaii Revised Statutes.

"Person" means any individual, partnership, corporation, or other legal entity, including government agencies.

"Principal use" means the primary or predominant use of any lot. If more than one lawful use exists on any property, they all shall be considered principal uses for the purpose of evaluating accessory uses.

"Public use and facility" means a use conducted by or a facility or structure owned or managed by the Federal Government, the State of Hawaii, or the County of Maui.

"Public utility facilities" includes telephone, electric, and cable television lines; poles; equipment, and structures; water or gas pipes, mains, valves, or structures; sewer pipes, valves, or structures; pumping stations; telephone exchanges and repeater stations; and all other facilities, equipment, and structures necessary for conducting a service by a government or a public utility.

"Public utility" means a closely regulated private enterprise with an exclusive franchise for providing a public service.

"Quasi-public use and facility" means a use conducted by or a facility or structure owned or operated by a nonprofit, religious, or eleemosynary institution.

"Rural use" means any use which is permitted by the provisions of sections 205-2 and 205-5, Hawaii Revised Statutes, as amended.

(b) To the extent that any of these definitions conflict with definitions relating to zoning in the Maui County Code, the definitions contained within the Code, as amended, shall apply. [Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: HRS §91-2)

§12-3-4 Application; contents. The application, in addition to the requirements outlined in Section 12-1-14, shall include the following:

(a) A non-refundable filing and processing fee of \$250.00.

(b) Identification of the applicant and documentation of ownership or authorization by the owners of land on which the proposed action is to occur.

(c) Tax map key and acreage of the land on which the proposed action is to occur.

(d) A scaled plot plan of the land upon which the proposed action is to occur.

(e) A shoreline survey if the parcel abuts the shoreline and is determined to be necessary by the Planning Director.

(f) A written description of the proposed action, including but not limited to, the use, length, width, height, depth, and materials to be used in the proposed action.

(g) A plan designating the location of the proposed action on the land. Any existing and proposed structures shall be shown by a dimensioned floor plan, sections, elevations, and other physical features.

(h) State land use district boundary description, community plan designation, county zoning designation, if any, and any other special designation.

(i) A brief description of the existing use of the property.

(j) A written assessment of the proposed action, in accordance with Subchapter 2 herein.

(k) Any additional information which may be required by the Planning Department to properly process the application. [Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: HRS §91-2)

§12-3-5 Application; acceptance and review.

(a) The applicant shall provide copies of the application as provided in the Rules of Practice and Procedure, Section 12-1-16. The Central Coordinating Agency shall review the application for completeness and may refuse to accept or process any application which is incomplete.

(b) Application; review. Upon a determination of completeness by the Central Coordinating Agency, the application shall be reviewed by the Planning Department and scheduled for hearing and action by the authority as soon as practicable. [Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: HRS §91-2)

SUBCHAPTER 2

GUIDELINES

§12-3-6 Evaluation guidelines. In reviewing a special use permit application, the following guidelines are applicable in determining an "unusual and reasonable" use in the state agricultural and rural districts:

(a) The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, Hawaii Revised Statutes, as amended, and the rules of the State Land Use Commission.

- (1) The use shall not be contrary to the objectives of chapter 205, Hawaii Revised Statutes, which are to preserve, protect, and encourage the development and preservation of lands in the state for those uses to which they are best suited in the interest of public health and welfare of the people of the state of Hawaii.
 - (2) If applicable, the use shall not be contrary to the objectives, policies and guidelines of the Coastal Zone Management Act, pursuant to Chapter 205A, Hawaii Revised Statutes, and the Special Management Area Rules and Regulations, Molokai Planning Commission.
 - (b) The desired use would not adversely affect surrounding property.
 - (c) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and school improvements, and police and fire protection.
 - (d) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established. In evaluating the conditions, trends and needs, the following aspects shall be considered, if applicable:
 - (1) The proximity of the use to other properties which are zoned to allow the use in the community plan district;
 - (2) The availability of other properties which are zoned to allow the use in the community plan district as demonstrated by the applicant;
 - (3) The proximity of the use to other properties with comparable uses in the community plan district;
 - (4) The market or public demand for the use as demonstrated by the applicant;
 - (5) The suitability of the site for the intended use;
 - (6) The economic and/or social benefits of the use to the community; and
 - (7) The economic feasibility of the use or project as demonstrated by the applicant.
 - (e) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.
- ([Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: HRS §91-2)

§12-3-7 Performance guidelines.

- (a) All special permits in the state agricultural and rural districts shall be subject to the following performance guidelines unless otherwise modified or deleted for good cause by the authority.

- (1) Final architectural, landscape architectural, and signage plans and exterior color scheme shall be subject to review and approval by the director, prior to the submittal of a building or grading permit or commencement of the use or operation;
 - (2) A time limit shall be placed on special permits for a limited term. The applicant shall be responsible to apply for any time extensions at least forty-five days prior to the expiration date of the special use permit;
 - (3) A special use permit shall be valid only for the use(s) as approved;
 - (4) A special use permit shall not be transferred without the prior written approval of the authority.
 - (5) The use(s) or structure(s) allowable by a special use permit shall not be expanded or increased in size or area or changed to another special use, unless authorized in the permit;
 - (6) The special use will be subject to periodic inspections by the Planning Department or other federal, state, or county agencies for compliance with the terms and conditions of the special use permit;
 - (7) the conditions of the special use permit shall be self enforcing and, accordingly, the permit shall be suspended from and after the time of breach of same. Upon due notice by the Planning Department that such a breach has occurred the applicant/permittee shall be entitled to a hearing on the restoration of the permit, provided that a written request for such hearing is filed with the department within ten days of the date of receipt of said notice of breach. If no appeal is duly filed, the authority shall revoke such permit.
 - (8) The project shall conform to the requirements of other federal, state, and county statutes, ordinances, rules, and regulations or codes;
 - (9) The use may be subject to other terms and conditions, as determined to be necessary by the authority; and
 - (10) In the event any historic, archaeological, or cultural sites; remains; artifacts; or resources are discovered during project construction, work shall stop and the State Historic Office, Department of Land and Natural Resources, and County Planning Department shall be duly notified to advise appropriate action.
 - (11) Hold harmless clause. [Eff. October 8, 1989]
- (Auth: HRS §205-6) (Imp: HRS §91-2)

SUBCHAPTER 3

PROCEDURES

§12-3-8 Decision and order.

(a) The authority shall have the sole power to approve or deny applications for special use permits for applications involving lands fifteen (15) acres or less or as otherwise authorized by HRS chapter 205.

(b) All final decisions and orders should be issued in writing within forty-five calendar days after the final vote of the authority, unless otherwise extended by vote of the authority for an additional fifteen days.

(c) The authority shall consider the evaluation guidelines herein in reaching its decision.

(d) The authority may place reasonable terms, conditions, and time stipulations upon such permit in accordance with the provisions herein. [Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: HRS §91-2)

§12-3-9 Notice of hearing; review of decision.

(a) The authority shall notify the Land Use Commission and such persons and agencies who have requested notice of same and/or may have an interest in the subject matter of the time and place of the hearing.

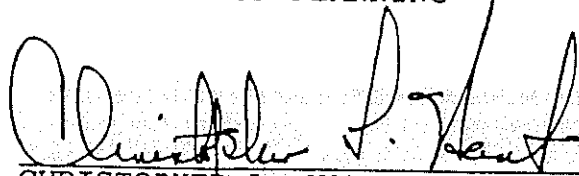
(b) For requests involving land areas greater than fifteen acres, a copy of the decision and a complete record of the proceedings before the authority shall be transmitted to the Land Use Commission within sixty days after the decision is rendered. [Eff. October 8, 1989] (Auth: HRS §205-6) (Imp: HRS §91-2)

§12-3-10 Appeal. A denial of the permit shall be appealable to the circuit court of the circuit in which the land is situated pursuant to Hawaii Revised Statutes Section 91-14. [Eff. October 8, 1989] (Auth: HRS §91-14) (Imp: HRS §91-2)

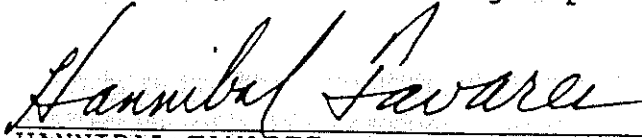
§12-3-11 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property or circumstance is held invalid for any reason, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end these rules are declared to be severable. [Eff. October 8, 1989] (Auth: HRS §91-2) (Imp: HRS §91-2)

ADOPTED this 28 day of September, 1989, at Wailuku,
Maui, Hawaii.

DEPARTMENT OF PLANNING



CHRISTOPHER L. HART
Director of the Planning Department



HANNIBAL TAVARES
Mayor, County of Maui

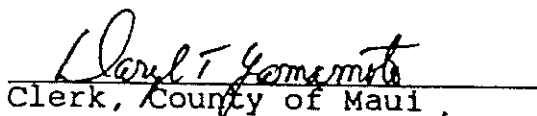
Approved this 28th day of
September, 1989.

APPROVED AS TO FORM
AND LEGALITY:



GUY A. HAYWOOD
Deputy Corporation Counsel
County of Maui 25/rules/l
9/25/89

Received this 28th day of
September, 1989.



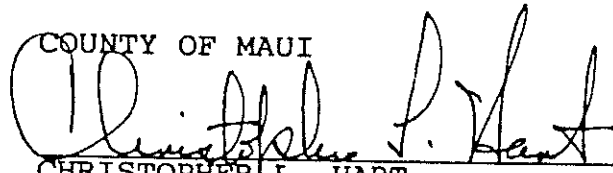
Clerk, County of Maui.

CERTIFICATION

I, CHRISTOPHER L. HART, Director of Planning, Department of Planning, County of Maui, do hereby certify:

1. That the foregoing is a full, true, and correct copy of the rules of the Molokai Planning Commission which were adopted by the Molokai Planning Commission on the 26th day of September, 1989, by affirmative vote of the proper majority following a public hearing that closed on September 26, 1989; and

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the 24th day of August, 1989.

COUNTY OF MAUI

CHRISTOPHER L. HART
Director of Planning